

**IN THE
SUPREME COURT
OF THE UNITED STATES**

October Term, 1977
No. 77-533

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

In re the Marriage of ANGELA
and JESS H. HISQUIERDO.

JESS H. HISQUIERDO,

Petitioner,

vs.

ANGELA HISQUIERDO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR RESPONDENT IN OPPOSITION

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JURISDICTION

Respondent does not question the
jurisdiction set forth in the petition.

QUESTIONS PRESENTED

The questions raised by petitioner
are incorrectly phrased. The sole
question for review is: Has the Cali-
fornia Supreme Court frustrated any
congressional intent by categorizing
United States Railroad Retirement Act
benefits as a community property asset
pursuant to the community property
laws of the State of California?

STATEMENT OF THE CASE

Petitioner's statement of the
case is incorrect. The question at
the trial level was simply whether
Railroad Retirement benefits con-
stitute a community property asset.
The question on appeal was whether

the recognition of a community interest in Railroad Retirement benefits frustrates any congressional intent. The California Supreme Court did not render any decision concerning social security benefits because that issue was not raised by the husband, petitioner herein.

POINT I

THE CALIFORNIA SUPREME COURT
IS THE FINAL ARBITER
CONCERNING INTERPRETATION OF
ITS COMMUNITY PROPERTY LAWS
WHERE THERE IS NO CONFLICT
WITH FEDERAL LAW.

The first point raised by petitioner is that there is no property right to the future entitlement of Federal Railroad Retirement Act benefits and therefore the California Supreme Court should not have held there is a community interest in Railroad Retirement Act benefits.

Petitioner argues that because the right to Railroad Retirement benefits is statutory, 45 U.S.C., Section 231 et seq., they are not contractual rights, and because they are not contractual rights, there can be no community property rights in such benefits. For this proposition petitioner cites a 1963 California Court of Appeal case in which the court stated that pension rights constitute an element of contractual compensation and, therefore, are earned by the performance of services. Petitioner argues that because Railroad Retirement benefits are not based on a contract, such benefits cannot be community property.

By the Petition for Writ of Certiorari, petitioner is attempting to have this court interpret California

Community Property Laws. The California Supreme Court has never stated that a contractual right is necessary to recognize a community interest in any retirement benefit. In fact, the California appellate courts have held that pension benefits pursuant to both federal and state statutes are community property to the extent that they are attributable to employment during marriage, In re Marriage of Fithian, 10 Cal.3d 592, 111 Cal.Rptr. 369, In re Marriage of Smith, 56 Cal.App.3d 247, 128 Cal.Rptr. 410, Bensing v. Bensing, 25 Cal.App. 889, 102 Cal.Rptr. 255, In re Marriage of Karlin, 24 Cal.App.3d 25, 101 Cal. Rptr. 240, Phillipson v. Board of Administration, 3 Cal.3d 32, 89 Cal.Rptr. 68.

The state courts are the final arbiters of the meaning and appropriate

application of the state statutes subject only to review by the United States Supreme Court if such construction or application is appropriately challenged on constitutional grounds, Beal v. Missouri Pac. R.R. Corp., 312 U.S. 45, 61 S. Ct. 418. A corollary to this rule is that when questions of property law which may involve a conflict between a state court decision and federal statutes, the Supremacy Clause of the United States Constitution requires a state law to yield no matter how clearly the subject matter otherwise falls within a state's acknowledged sphere of power, Free v. Bland, 369 U.S. 664, 82 S.Ct. 398. The question of whether a contractual right, a statutory right or no right at all is required for property to be considered community property is for

the California courts to decide. In this regard, the California Supreme Court has already ruled.

POINT II

THE CALIFORNIA SUPREME COURT HAS NOT VIOLATED ANY FEDERAL STATUTE NOR FRUSTRATED ANY CONGRESSIONAL INTENT BY ITS DECISION REPORTED AT 9 Cal.3d 613, 139 Cal.Rptr. 590.

The Supreme Court of California did not award respondent any part of petitioner's Railroad Retirement benefits. What the court did was hold that the petitioner's railroad retirement benefits are community property and that the case of Wissner v. Wissner, 338 U.S. 655 does not prohibit a California court from evaluating a community interest in an asset, and thereafter awarding a spouse an equivalent amount of other property available for distribution.

Wissner does not forbid the states from applying their community property laws to achieve an equitable division of marital property, so long as the operation of those laws does not frustrate congressional intent., In re Marriage of Milhan, 13 Cal.3d 129, 132 117 Cal.Rptr. 810. The California courts have always recognized the principle that if the intent of Congress in creating a federal right is not violated by application of California's community property laws, then the status of such rights is governed by California law, In re Marriage of Fithian, 10 Cal.3d 592, 111 Cal.Rptr. 359.

In Point III of petitioner's Petition, on pages 9 through 11, petitioner argues that the purpose of

the Railroad Retirement Act precludes a divorced spouse from any entitlement to her ex-husband's future benefits. He argues that to take away as much as half of that retirement income guaranteed by the railroad retirement act will defeat the congressional purpose of providing retirement income to railroad workers.

As is discussed above, the California Supreme Court decision does not mean that a California court will award one half of all future benefits to a divorced spouse. All that is required under California community property laws is that the property acquired during the marriage be distributed equally upon dissolution of the marriage. California Civil Code Section 4800, et seq.

One of the ways in which equal division can be accomplished is to grant one spouse all of an asset and award the other spouse another asset of equal value.

The California Supreme Court dealt with each of petitioner's arguments concerning frustration of congressional intent on pages 5 through 10 of the opinion which was appended to petitioner's petition as Appendix A. The California Supreme Court determined therein that a consideration of Railroad Retirement benefits as a community property asset does not violate any federal statute nor the intent of Congress. The Court pointed out that although a spouse's annuity terminates on divorce, and a widow or widower is entitled to an annuity, that the fact that Congress made no provision for a

former spouse in the Railroad Retirement Act might be rationally explained by Congress' reliance upon state property law to protect an ex-wife's interest in the railroad employee's annuity.

In Point II of the petition, petitioner argues that Congress in enacting the railroad retirement act, specifically provided that the divorced spouse's rights are terminated, 45 USC 231 d(c) (3) (B), and to hold that a divorced spouse is still entitled to a portion of the ex-spouse's benefits interferes with the specific intent of Congress that any such entitlement is terminated when the parties are absolutely divorced.

This argument is entirely misleading. The only right which is terminated

upon divorce is the spouse's right to a spouse's annuity, under that statute cited by petitioner. That statute has nothing to do with the railroader's own pension.

CONCLUSION

By its decision, the California Supreme Court did not call upon the California trial courts to make any determination that would effect the husband's right to receive his retirement benefits pursuant to the United States Railroad Retirement Act. By recognizing a community property interest in the husband's retirement benefits, the court merely interpreted the community property laws of California in order to effect an equal division of the assets upon dissolution

of a marriage. No federal statutes are violated by the California Supreme Court ruling, nor is any expressed or implied intent of Congress frustrated.

Respectfully submitted,

BENNETT AND FIELDS

BY

A handwritten signature in cursive script, appearing to read "Ray C. Bennett", is written over a horizontal line.

RAY C. BENNETT

Attorney for Respondent